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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).No.13 of 2004

Commissioner of Income Tax-I
Coimbatore. .. Appellant

Vs.

SIV Industries Ltd.,
Coimbatore. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 22.7.2003 in ITA No.1733/Mds/1995 for the assessment year 1985-86.against the order of the Commissioner of Income Tax (Appelas) Coimbatore dated 15/6/95 in IT Appeal No. 372-C/94-95 agaisnt the order of the Assistant Commissioner of Income Tax (Assessment) Range, Coimbatore dated 24/3/88 in proceedings No 47-023-CN-0158-85-86/IAC (A) R.I

For Appellant : Mr.N.Muralikumaran, Sr.SC for IT
For Respondent : Official Liquidator (under liquidation)

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.1733/ Mds/1995 dated 22.7.2003, raising the following substantial question of law.

> " Whether in the facts and circumstances of the case, the Tribunal was right in holding that tax paid under section 140A can be treated as "amount paid in pursuance of any order of assessment" for the purpose of computing interest under section 244(1A) of the Income-tax Act?"

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2. The facts which are necessary for the disposal of this appeal are as under:

2.1. The assessment of the assessee company for the assessment year 1985-86 was completed. The unabsorbed business loss relating to the assessment year 1984-85 was set off in the assessment year in question. Then, the assessee applied for rectification on the ground that carried forward deduction under section 80J of the Income-tax Act, 1961 (in short 'the Act') relating to the assessment years 1978-79 to 1981-82 was not set off. Accordingly, the total income was revised. Deducting the advance tax, tax under section 140A and interest under sections 216 & 139(8) of the Act, refund was determined. The assessment again rectified and interest under section 244 of the Act payable to the assessee on the amount of refund was determined.

2.2. Contending that the computation of interest by the assessing officer was not correct, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who, by order dated 17.12.1989, held that since the assessing officer did not grant the refund within a period of three months from the end of the month in which the order of refund was passed, the assessee is entitled to interest from the date following the expiry of the period of three months to the date on which the refund was granted. The Commissioner of Income-tax (Appeals) held that the interest should be paid to the assessee from 1.6.1989 to 23.7.1989, viz., the date following the expiry of three months from the end of the month in which the appellate order was passed to the date of refund. The Commissioner of Income-tax (Appeals) also excluded the payment made under section 140A of the Act. Finding that the rate of interest was not correct, the Commissioner of Income-tax (Appeals) enhanced the same from 1% to 15% per annum and determined the interest payable at Rs.58,22,026/- as against Rs.6,83,974/- as determined by the assessing officer.

2.3. The Appellate Tribunal, on appeal, confirmed the same. Exasperated by the order of the Appellate Tribunal, the Revenue has come forward with this appeal raising the question of referred to above.

3. The main point involved in the question is whether the tax paid under section 140A of the Act can be taken into account while determining the interest on refund payable to the assessee. In this connection, it is brought to our notice the decision in CIT v. Ashok Leyland Ltd. (254 ITR 641) wherein, this court, after referring to the decision of Apex Court in Modi Industries Ltd. v. CIT (216 ITR 759), held that after adjustment of advance tax at the time of regular assessment, if some balance remains to the credit of the assessee, that balance is treated as excess amount of advance tax which has to be refunded with interest . This Court also held that the assessee is entitled to interest under section 18 of the Surtax Act read with section 244(1A) of the Income-tax Act, 1961, on the over

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payment of the self-assessment tax paid by the assessee.

4. Applying the ratio laid down by this Court in CIT v. Ashok Leyland Ltd. (254 ITR 641), we hold that while determining interest under section 244(1A) of the Act, the self-assessment tax paid under section 140A should also be taken into consideration as the tax paid by way of self-assessment under section 140A of the Act would get adjusted against the assessed tax and partake the character of tax paid in pursuance of the assessment order.

5. We therefore hold that the Appellate Tribunal was correct in holding that the tax paid under section 140A of the Act can be treated as amount paid in pursuance of order of assessment for the purpose of computing interest under section 244(1A) of the Act. Accordingly, the question of law is answered in the affirmative and against the Revenue. The appeal stands dismissed. No costs.

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL, RAJAJI BHAVAN, BESANT NAGAR, CHENNAI

2. THE INCOME TAX APPELLATE
TRIBUNAL CHENNAI C BENCH CHENNAI.

3. THE COMMISSIONER OF INCOME TAX
APPEALS, COIMBATORE,

4. THE ASSISTANT COMMISSIONER
OF INCOME TAX, (ASSESSMENT) RANGE I COIMBATORE.

5. THE COMMISSIONER OF INCOME
TAX-I COIMBATORE.

+ One cc to Mr. N. Muralikumaran Advocate SR 12005
KSJ (co)
sg 14/3/07 T.C.(A).No.13 of 2004

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